

RESPONSE

In view of the following remarks, the Examiner is respectfully requested to withdraw the rejections and allow Claims 1-10, as well as new Claims 21-30, the only claims pending in this application.

Formal Matters

Claims 1-10 are pending after entry of the amendments set forth herein

Claims 11-20 have been canceled.

Claims 1-10 were examined. Claims 1-3, and 5-9 were rejected and claims 4 and 10 were objected to. No claims were allowed.

Claims 1 has been amended for clarity. The amendment to the claim is made solely in the interest of expediting prosecution, and shall not be construed as an acquiescence to any objection or rejection. Support for the amendment to the claim is found in the claims as originally filed, and throughout the specification, in particular at the following exemplary locations: page 2, lines 8-12, page 5, lines 29-31, and as exemplified by Figure 3H. Claim 6 has been amended to correct a typographical error and Claim 7 has been amended to correct the dependency.

New claims 21-30 have been added. Support for the claims can be found in the claims as originally filed. New independent Claim 21 incorporated the subject matter of original Claims 1 and 4, and new independent claim 29 incorporates the subject matter of original Claims 1 and 10.

As the above amendments introduce no new matter to the application, their entry is respectfully requested.

Allowable Subject Matter

The Applicants express gratitude in Examiner's indication that claims 4 and 10 are directed to allowable subject matter.

Rejection under 35 U.S.C. §102

Claims 1-3, 5, 8, and 9 have been rejected under 35 U.S.C. §102 for allegedly being anticipated by Li et al., Nature 412:166-169 (2001) ("Li et al."). In view of the

amendments to the claims and the remarks made herein this rejection is respectfully traversed as applied and as it may be applied to the pending claims.

The present invention is directed to a structure for the construction of one of a microscale and nanoscale device, comprising a rigid frame supporting a diaphragm **comprising a first material** having an opening, and a **region of a second material** disposed in the opening.

In contrast the cited reference Li et al., discloses a single structure comprising **a single material**. In particular, Li et al. discloses a structure comprising only Si_3N_4 having a single opening therethrough (see Figure 1a). Nowhere does Li et al. teach a structure comprising of a first material and a second material.

In the spirit of expediting prosecution and without conceding as to the correctness of the rejection, claim 1 has been amended for clarification to further recite "wherein the first material and the second material are different". Support for the amendment can be found in the claims as originally filed and throughout the specification, at for example, page 2, lines 8-12, page 5, lines 29-31, and Figure 3H.

It is well established that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987), cert. denied, 481 U.S. 1052 (1987). See also, Scripps Clinic and Research Foundation v. Genentech, Inc., 18 USPQ 2d 1001 (Fed. Cir. 1991).

Since Li et al. only teaches a structure comprising a single material, the cited reference fails to disclose every element found in the claims of the present invention. As such, claims 1-3, 5, 8, and 9 are not anticipated under 35 U.S.C. § 102 by the cited reference. Therefore, the Applicants respectfully request that this rejection be withdrawn.

Rejection under 35 U.S.C. §103

Claims 6 and 7 have been rejected under 35 U.S.C. §103 for allegedly being rendered obvious by Li et al., Nature 412:166-169 (2001) as applied to claim 1-3, 5, and 9. In view of the amendments to the claims and the remarks made herein this rejection is respectfully traversed as applied and as it may be applied to the pending claims.

In order for a cited reference render the claims of the present application obvious, each and every limitation found in the claims must be disclosed in the cited reference. As noted above, the cited reference fails to teach each and every limitation found in the claims of the present application. In particular, the cited reference fails to teach a structure comprising a first material and a second material, where the first material and the second material are different.

As such, since Li et al. fails to teach each every limitation found in the claims of the present application, the cited reference fails to render the claims of the present application obvious. Therefore, the Applicants respectfully request that this rejection be withdrawn.

Conclusion

The Applicants respectfully submit that all of the claims are in condition for allowance, which action is requested. The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-1078.

Respectfully submitted,

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